

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WILLIAM SARMIENTO, JR.,

Plaintiff,

v.

WASHOE COUNTY, *et al.*,

Defendants.

Case No. 3:20-cv-00679-MMD-WGC

ORDER

This action is a *pro se* civil rights action under 42 U.S.C. § 1983 by an inmate in the custody of the Nevada Department of Corrections (“NDOC”). On July 15, 2021, the Court issued an order dismissing the complaint with leave to file an amended complaint within 30 days of the date of that order. (ECF No. 6 at 10.) The time period for filing an amended complaint has now expired, and Plaintiff William Sarmiento has not filed an amended complaint or otherwise responded to the Court’s order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v.*

1 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure
2 to comply with local rules).

3 In determining whether to dismiss an action for lack of prosecution, failure to obey
4 a court order, or failure to comply with local rules, the court must consider several factors:
5 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
6 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
7 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
8 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
9 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

10 In the instant case, the Court finds that the first two factors, the public's interest in
11 expeditiously resolving this litigation and the Court's interest in managing the docket,
12 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
13 in favor of dismissal, since a presumption of injury arises from the occurrence of
14 unreasonable delay in filing a pleading ordered by the Court or prosecuting an action.
15 See *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public
16 policy favoring disposition of cases on their merits—is greatly outweighed by the factors
17 in favor of dismissal discussed herein. Finally, a court's warning to a party that his or her
18 failure to obey the court's order will result in dismissal satisfies the "consideration of
19 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
20 *Henderson*, 779 F.2d at 1424. The Court's order requiring Sarmiento to file an amended
21 complaint within 30 days expressly stated that, if Sarmiento failed to file a timely amended
22 complaint, this action would be dismissed with prejudice for failure to state a claim. (ECF
23 No. 6 at 10.) Thus, Sarmiento had adequate warning that dismissal would result from his
24 noncompliance with the Court's order to file an amended complaint within 30 days.

25 It is therefore ordered that Plaintiff William Sarmiento's application to proceed *in*
26 *forma pauperis* (ECF No. 1) without having to prepay the full filing fee is granted.
27 Sarmiento shall not be required to pay an initial installment fee. Nevertheless, the full filing
28 fee shall still be due, pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation

1 Reform Act ("PLRA"). The movant herein is permitted to maintain this action to conclusion
2 without the necessity of prepayment of fees or costs or the giving of security therefor.

3 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the PLRA,
4 the NDOC will forward payments from the account of William Sarmiento, Jr., # 91864 to
5 the Clerk of the United States District Court, District of Nevada, 20% of the preceding
6 month's deposits (in months that the account exceeds \$10.00) until the full \$350.00 filing
7 fee has been paid for this action.

8 The Clerk of Court is directed to send a copy of this order to the Finance Division
9 of the Clerk's Office.


10 The Clerk of Court is directed to send a copy of this order to the attention of *Chief*
11 *of Inmate Services for the Nevada Department of Corrections*, P.O. Box 7011, Carson
12 City, NV 89702.

13 It is further ordered that, regardless of the success of Sarmiento's action, the full
14 filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by the PLRA.

15 It is further ordered that this action is dismissed with prejudice based on
16 Sarmiento's failure to file an amended complaint in compliance with this Court's July 15,
17 2021 order and for failure to state a claim.

18 The Clerk of Court is directed to enter judgment accordingly and close this case.

19 DATED THIS 30th Day of August 2021.

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24 MIRANDA M. DU
25 CHIEF UNITED STATES DISTRICT JUDGE
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